

# DOCKET SECTION

BEFORE THE  
POSTAL RATE COMMISSION  
WASHINGTON, D.C. 20268-0001

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POSTAL RATE COMMISSION  
OFFICE OF THE SECRETARY

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POSTAL RATE AND FEE CHANGES, 1997

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Docket No. R97-1

**REPLY OF THE UNITED STATES POSTAL SERVICE  
TO MOTIONS FILED BY THE OCA  
SEEKING TO HAVE THE POSTAL SERVICE  
REBUT A COURTESY ENVELOPE MAIL PROPOSAL  
IT WILL LIKELY PROPOSE**

The United States Postal Service hereby submits this reply to a series of motions filed by the Office of the Consumer Advocate on September 26, 1997 (hereinafter, OCA Motions), seeking to compel responses to interrogatories OCA/USPS-T32-137 and 138; further responses to interrogatories OCA/USPS-T32-127, 130, 132, 133, and 135; and the identification of a witness to respond to cross-examination concerning its Docket No. MC95-1 Courtesy Envelope Mail (CEM) proposal. For the reasons explained below, the OCA Motions should be denied in their entirety.

**The OCA Proposes To Reverse The Order Of These Proceedings**

The very crux of the OCA's strategy is revealed at page 13 of its Motions, where it anxiously confesses that it "will likely propose some version of CEM to the Commission in this case," that it is "highly conscious of the Postal Service criticisms that have been leveled against it in the past" and that it "would like to make the best initial presentation possible before the Commission." The OCA's discovery practice in this proceeding is nothing more than a brazen attempt to turn due process on its head. The OCA now seeks to force the Postal Service to reveal now what its rebuttal may be to a CEM proposal that the OCA apparently will offer later in this proceeding.

This strategy has been apparent from the earliest stages of this proceeding, long

before the OCA's belated confession. Under the guise of asking questions about something it termed "Modified Prepaid Reply Mail,"<sup>1</sup> the OCA directed several questions to witness Fronk which were clearly an attempt to elicit a response to a prospective CEM proposal.<sup>2</sup>

Slinking from the back door to the side door, the OCA has propounded the interrogatories disputed here: They ask:

whether a revived CEM proposal would be "unworkable;"<sup>3</sup>

whether it would be consistent with postal objectives and policies;<sup>4</sup>

whether, if CEM were approved by the Governors in this case, mailers would be more likely overpay on CEM or underpay on other First-Class Mail;<sup>5</sup>

what the Postal Service's current views are of the OCA's Docket No. MC95-1 CEM proposal;<sup>6</sup>

what the Postal Service's current views are of the Governors' decision on CEM in Docket No. MC95-1;<sup>7</sup>

what the Postal Service's reaction would be to the introduction of a CEM proposal in the instant proceeding;<sup>8</sup>

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<sup>1</sup> "Modified" so that "prepaid" reply mail would need CEM postage affixed.

<sup>2</sup> See interrogatories OCA/USPS-T32-19, T32-33 and T32-34, filed (August 29, 1997).

<sup>3</sup> OCA/USPS-T32-137.

<sup>4</sup> OCA/USPS-T32-138.

<sup>5</sup> OCA/USPS-T32-127.

<sup>6</sup> OCA/USPS-T32-130.

<sup>7</sup> OCA/USPS-T32-130(a)-(b).

<sup>8</sup> OCA/USPS-T32-130(c)-(d).

whether potential participants in PRM and QBRM would be likely to participate in a CEM program, if it were adopted;<sup>9</sup>

whether a revival of CEM would be consistent with the Postal Service's goal of increasing automation;<sup>10</sup> and

whether the revival of the CEM proposal advanced in Docket No. MC95-1, but with a 3-cent discount instead of the rate differential originally attached to it, would improve allocative efficiency generally by more closely aligning costs and rates.<sup>11</sup>

In response to a number of these questions, witness Fronk and the Postal Service have made it clear that, for purposes of the development of PRM, there has been no analysis of the Docket No. MC95-1 CEM proposal or any re-investigation of the "two-stamp" problem. None of this was necessary because witness Fronk's mission was simply to develop a product which did not have a "two-stamp" problem attached to it.<sup>12</sup>

Accordingly, it is only in passing that the Postal Service and its witnesses acknowledged that the "two-stamp" problem had caused the Governors to reject CEM in Docket No. MC95-1.<sup>13</sup>

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<sup>9</sup> OCA/USPS-T32-132.

<sup>10</sup> OCA-USPS-T32-133.

<sup>11</sup> OCA/USPS-T32-135.

<sup>12</sup> See, for example, witness Fronk's September 24, 1997, response to OCA/USPS-T32-127, T32-132, T32-133, 134a, and T32-135; the September 24, 1997 USPS responses to T32-130. In his August 29, 1997, response to OCA/USPS-T32-36, witness Fronk clearly states that he has not investigated the two-stamp issue, as it is not the basis for his PRM proposal. See also his responses to OCA/USPS-T32-69b and 73 (September 16, 1997).

<sup>13</sup> See, USPS-T-23, at 2; USPS-T-30, at 24; USPS-T-32, at 6 and 37; and USPS response to OCA/USPS-T32-18 (August 29, 1997).

### **The Postal Service Has Not Put CEM On The Table**

Witness Fronk has explained that the parameters he was given to work with in developing PRM included that he avoid the “two-stamp” problem, pure and simple. Neither he nor the Postal Service is using the OCA’s Docket No. MC95-1 CEM proposal in Docket No. R97-1 as “a whipping horse” to support the PRM proposal. Simply acknowledging the historical fact the “two-stamp” problem surfaced in connection with CEM does not “put CEM into play” or “on the table” or open the Postal Service up to cross-examination about the details of the Docket No. MC95-1 CEM proposal. Nothing about the Postal Service’s direct case has changed the CEM batting order: Proponent first; any opponent second.

At pages 10-11 of its Motions, the OCA argues that the Postal Service’s unwillingness to comment on CEM is inconsistent with its practice of sometimes commenting on alternative ideas put forth to its witnesses by participants in the course of discovery. More than any party to these proceedings, the Postal Service appreciates the importance and value of illuminating its proposals, often by being as responsive as possible to questions about those proposals or ones which seek to contrast them with alternatives. But the Postal Service has not analyzed CEM since Docket No. MC95-1, did not find it necessary to analyze it for purposes of designing and proposing PRM, and has made that clear in its interrogatory responses. Had any such analysis been conducted, the Postal Service would have disclosed it in accordance with its obligations under the Commission’s rules.

### **There Is A Time And A Place For Rebuttal**

Just as the Commission’s rules do not entitle intervenors to conduct discovery on

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the Docket No. R97-1 Request before it is filed at the Commission,<sup>14</sup> those same rules do not permit the Postal Service and intervenors to obtain access to information prepared in connection with an intervenor's direct testimony before it is filed.<sup>15</sup> In the same vein, notwithstanding the Commission's rules which permit discovery in Docket No. R97-1 against the Postal Service on matters outside the scope of its direct testimony well into the case schedule, no intervenor should be permitted to use discovery to require the Postal Service to disclose how it might rebut a yet-to-be-defined rate or classification proposal which that intervenor says it "likely will propose."

If the OCA intends to revive some variation of CEM in the instant proceeding, there is a time and a place in the procedural schedule for such a proposal to be introduced. Then, the Postal Service and the other parties, in accordance with that same procedural schedule, are permitted to examine that proposal through discovery and file rebuttal testimony and briefs which reveal their positions in response to it.

Although the Postal Service and other parties may be free to indicate now what their positions in response to such a proposal might be, the Postal Service submits that they cannot be compelled now to do so.

In support of its request for extraordinary discovery privileges, the OCA argues that the Postal Service "would like any such OCA proposal to be easily attacked" and that the Postal Service has an "ambush" or "battle of the wits" mentality that "runs against the tide of modern discovery." OCA Motions at 13.

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<sup>14</sup> See also, 39 U.S.C. § 410(c)(4), which exempts from the mandatory disclosure provisions of the Freedom of Information Act (5 U.S.C. § 552), Postal Service records which would reveal information being prepared in connection with proceedings before the Commission.

<sup>15</sup> Otherwise, the Postal Service could use discovery to seek to impose a continuing obligation on the OCA to periodically disclose successive developments in the progress of its Docket No. R97-1 CEM proposal.

The Postal Service gives the Commission credit for understanding the inappropriateness of basing any ruling in this matter on presumptions about the Postal Service's response to a Docket No. R97-1 CEM proposal it has not seen. Given the fair and orderly cycle of proposal and rebuttal on CEM in Docket Nos. R87-1, R90-1, and MC95-1, in accordance with the Commission's rules, the Postal Service wonders how the OCA's initiation of that cycle again or any party's rebuttal in Docket No. R97-1 could be regarded as some form of "ambush." And, if resort to one's wits runs against the tide of modern litigation practice, the Postal Service and all other parties should pray that the Commission's rules continue to reflect a contrarian spirit.<sup>16</sup>

At page 14 of its Motions, the OCA asserts that its many interrogatories have "flagged a number of issues it thinks are important" in connection with whatever version of CEM it likely will propose. The OCA laments that "the Postal Service clearly wants to reveal its own set of issues only at the last minute." OCA Motions at 14. The Postal Service cannot know what issues it may "reveal" concerning CEM in this case until it sees a live Docket No. R97-1 CEM proposal and has conducted discovery and cross-examined CEM witnesses about it.

#### **The OCA Misreads The Record**

At page 9 of its Motions, the OCA argues that the Postal Service's August 29, 1997, response to OCA/USPS-T32-43 "suggests at least some knowledge about the CEM concept -- much different than the "don't know" or "haven't thought about it" approach now being so studiously employed." The OCA argues that "in offering

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<sup>16</sup> If the OCA is tired of "going first" on CEM, the Postal Service can empathize. The Postal Service, at times, is tempted to imagine a ridiculously unfair Commission rule requiring intervenors to declare their positions in response to Postal Service proposals before they initiate discovery on the Postal Service's case.

support for PRM,” witnesses Fronk and Miller “purported to know something about CEM and the so-called two stamp problem.”

The “something” they knew was that their mandate was to develop a courtesy reply proposal that did not require the use of differently-denominated First-Class Mail stamps, because the Governors had rejected CEM on that basis. In discussions about the Governors Docket No. MC95-1 decision and Postal Service Docket No. MC95-1 rebuttal testimony, witness Fronk gained all the understanding of the “two-stamp” problem that was necessary for the development of PRM. Did it require that he review the Docket No. MC95-1 record and immerse himself in the details of CEM or update the Postal Service’s rebuttal testimony analysis? No.<sup>17</sup> The details of CEM were not necessary to his understanding of the “two-stamp” problem he was directed to avoid.

Accordingly, when asked by the OCA to offer the Postal Service’s current opinion concerning the estimates and projections used by witnesses Alexandrovich and Potter in Docket No. MC95-1, the Postal Service indicated in response to OCA/USPS-T32-43 August 29, 1997 that it was unaware of any basis for disagreeing with their testimony.” Why? For the simple reason that it has not, since Docket No. MC95-1, examined the CEM issue or updated the Potter and Alexandrovich analyses.

**The OCA Is Free To Sponsor CEM Testimony Which Contrasts Its CEM Proposal With PRM**

At pages 10 and 14 of its Motions, the OCA argues that the Postal Service should be required to identify a witness who can stand for cross-examination on the

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<sup>17</sup> No more than the Postal Service’s decision not to include a First-Class Mail rate differential for “non-transported” letters and cards did not require witness Fronk to familiarize himself with the details of previous proposals for such a category by Niagara Telephone Company. Nor has his proposal of a uniform First-Class Mail additional-ounce rate required that he immerse himself in the details of previous proposals for non-uniform rates.

CEM issue at this point in the case. Considering that the Postal Service's PRM costing and pricing witnesses knowledge of CEM is limited to the fact that it creates a "two-stamp" problem that they were directed to avoid in developing PRM, and that neither has studied the OCA's Docket No. MC95-1 CEM proposal to any material degree beyond that point, the OCA is correct that witness Fronk (and, by implication, witnesses Miller and O'Hara) would be an uninformative witness about CEM beyond that level of detail. Nevertheless, the OCA is entitled to cross-examine witness Fronk to explore the limits of his knowledge and about the decision to develop PRM in a manner which avoids the use of postage stamps.

At pages 10 and 14 of its Motions, the OCA argues that witness Alexandrovich (currently USPS-T-15) should be compelled to provide CEM testimony in Docket No. R97-1. If the OCA had bothered to investigate, it would know that he has had no responsibilities related to CEM analysis since the conclusion of Docket No. MC95-1. There would be little he could possibly offer in the current proceeding on CEM except to acknowledge that he presented Docket No. MC95-1 rebuttal testimony on the subject and to confirm that he has had no responsibilities related to CEM analysis since that case which would permit him to update that testimony.

If the OCA believes that the Commission would benefit by the appearance of a witness who would "speak freely" (OCA Motions at 15) about CEM, the Postal Service submits that the appropriate candidate to do so would be an OCA witness sponsoring a CEM proposal. In response to such testimony, the Postal Service will assess its options.

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WHEREFORE, the OCA Motions should be denied.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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September 30, 1997

CERTIFICATE OF SERVICE

I hereby certify that I have this date served the foregoing document upon all participants of record in this proceeding in accordance with section 12 of the Rules of Practice.



Michael T. Tidwell